

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHARLES WALTER WEBER,

Plaintiff,

v.

OFFICER OLDENHUIS, *et al.*,

Defendants.

CASE NO. C18-0972-JCC

ORDER

This matter comes before the Court on Plaintiff's objections (Dkt. No. 12) to United States Magistrate Judge James Donohue's Report and Recommendation (Dkt. No. 10) regarding Plaintiff's 42 U.S.C. § 1983 complaint (Dkt. No. 5). Having thoroughly considered the Report and Recommendation, the Plaintiff's objections, and the relevant record, the Court finds oral argument unnecessary and hereby **OVERRULES** Plaintiff's objections and **ADOPTS** Judge Donohue's Report and Recommendation.

I. BACKGROUND

Plaintiff Charles Weber is an inmate at the Monroe Correctional Complex in Monroe, Washington. (Dkt. No. 5 at 3.) He alleges that on December 6, 2017, correctional staff searched his cell block and confiscated his writings from the "Book of Shadows," a religious text. (*Id.* at 3–4.) Mr. Weber alleges that he unsuccessfully attempted to reclaim his property by writing letters to prison staff, proceeding through the prison's grievance procedure and appeals process,

1 and filing a tort claim against the State of Washington. (*Id.* at 3–6.) Mr. Weber then brought this
2 lawsuit, pursuant to 42 U.S.C. § 1983, requesting monetary damages to compensate him for the
3 loss of his property. (*Id.* at 6.)

4 Judge Donohue found that Mr. Weber’s complaint alleges deprivation of his property
5 without due process of law. (*Id.* at 3.) Judge Donohue noted that where a plaintiff alleges that
6 their property was taken by a state employee, either negligently or intentionally, no federal due
7 process claim exists so long as an adequate state post-deprivation remedy is available. (*Id.* at 2)
8 (citing *Hudson v. Palmer*, 468 U.S. 517, 533 (1984); *Parratt v. Taylor*, 451 U.S. 527, 540-41
9 (1981), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327 (1986)). Judge
10 Donohue found that Mr. Weber had not alleged that Washington’s tort claim process was
11 inadequate, and thus that Mr. Weber had failed to state a claim upon which relief could be
12 granted. (*Id.* at 3) (citing Wash. Rev. Code § 4.92). Judge Donohue therefore recommends that
13 the Court dismiss the complaint with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

14 Mr. Weber objects to Judge Donohue’s Report and Recommendation. (Dkt. No. 12.)
15 After detailing his administrative efforts to reclaim his property and his unsuccessful state tort
16 claim, Mr. Weber argues that his complaint should not be dismissed because “he has shown by
17 clear and convincing evidence and facts that his due process rights have been violated.” (*Id.* at 9)
18 (original in all caps).

19 **II. DISCUSSION**

20 **A. Report and Recommendation to Dismiss**

21 Judge Donohue correctly concluded that Mr. Weber’s complaint fails to state a claim
22 upon which relief can be granted. (*See* Dkt. No. 10.) Mr. Weber claims that prison officials
23 deprived him—whether negligently or intentionally—of his writings without affording him due
24 process of law. (*See generally* Dkt. No. 1.) That is not a cognizable claim so long as Washington
25 provides an adequate post-deprivation remedy. *Hudson*, 468 U.S. at 531–33. Mr. Weber
26 unsuccessfully pursued Washington’s administrative and tort claims remedies—although he

1 disputes the outcome of those processes, he does not appear to argue that they are inadequate in a
2 constitutional sense. (*See* Dkt. No. 5 at 5.) Nor is there any evidence in the record that suggests
3 Washington's remedies are inadequate. Thus, as Judge Donohue concluded, Mr. Weber has
4 failed to state a claim upon which relief can be granted and his complaint must be dismissed. 28
5 U.S.C. § 1915(e)(2)(B)(ii).

6 **III. CONCLUSION**

7 For the foregoing reasons, the Court **OVERRULES** Plaintiff's objections (Dkt. No. 12)
8 and **ADOPTS** Judge Donohue's Report and Recommendation in full (Dkt. No. 10). Plaintiff's
9 complaint is **DISMISSED** with prejudice. While Mr. Weber has not stated a claim for
10 deprivation of property without due process of law, he may elect to bring different claims arising
11 out of the same allegations, such as for violations of his First Amendment right to freedom of
12 expression or free exercise of religion, which may be cognizable under 42 U.S.C. § 1983.

13 DATED this 13th day of November 2018.

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A handwritten signature in black ink, reading "John C. Coughenour", written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE